

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 573 OF 2015
WITH
CIVIL APPLICATION NO. 13138 OF 2015
WITH
CIVIL APPLICATION NO. 8880 OF 2016
WITH
CIVIL APPLICATION NO. 8881 OF 2016
WITH
CIVIL APPLICATION NO. 8882 OF 2016
WITH
CIVIL APPLICATION NO. 8883 OF 2016
WITH
CIVIL APPLICATION NO. 8884 OF 2016

- 1] Tukaram S/o Laxman Sonulkar
Age: 47 years, Occ: Agriculture
R/o Gavhanewadi, Sonulkar Vasti
Tal. Shrigonda, District : Ahmednagar.
 - 2] Balu S/o Laxman Sonulkar,
Age : 51 years, Occ: Agriculture
R/o Gavhanewadi, Sonulkar Vasti
Tal. Shrigonda, District : Ahmednagar.
-Appellants.**
(Orig. Defendants)

Versus

- 1] Sau. Tarabi w/o Ramdas Malgunde
Age: 54 years, Occ: Agri & Labour
R/o Dhoksangavi, Post Nimgaon Bhogi
Tq. Shirur. District : Pune.
- 2] Gangubai W/o Laxman Sonulkar
Age: 86 years, Occ: Nil
R/o Ganji Bhoyare, Tal Parner
District Ahmednagar.
- 3] Shri. Dagadu Lahanu Sonulkar
Age: 93 years, Occ: Nil

- 4] Shri. Dadabhau Dagadu Sonulkar
Age: 75 years, Occ: Agri
- 5] Shri. Dnyandeo Dagadu Sonulkar
Age: 73 years, Occ: Agri
- 6] Shri. Shivaji Dagadu Sonulkar
Age: 58 years, Occ: Agri
- 7] Sau. Vimal Shivaji Sonulkar
Age: 53 years, Occ: Household
- 8] Sau. Deubai Dadabhau Sonulka
Age: 70 years, Occ: household
- 9] Sau. Housabai Dnyandeo Sonulkar
Age: 68 years, Occ: Household
- 10] Shri. Vithoba Lahanu Sonulkar
Age: 91 years, Occ: Nil
- 11] Shri. Jaywanta Vithoba Sonulkar
Age: 78 years, Occ: Nil
- 12] Sau. Radhabai Jaywanta Sonulkar
Age: 73 years, Occ: Nil
- 13] Shri. Sukhdeo Vithoba Sonulkar
Age: 76 years, Occ: Nil
- 14] Sau. Nababai Sukhdeo Sonulkar
Age: 70 years, Occ: Nil
- 15] Shri. Gena Vithoba Sonulkar
Age: 72 years, Occ: Nil
- 16] Sau. Suman Gena Sonulkar
Age: 68 years, Occ: Household
- 17] Shri. Bhausahab Sampat Sonulkar
Age: 48 years, Occ: Agriculture
- 18] Shri. Sandip Sampat Sonulkar
Age: 33 years, Occ: Agriculture

- 19] Shri. Rama Lahanu Sonulkar
Age: 85 years, Occ: Nil
- 20] Sau. Indubai Rama Sonulkar
Age: 78 years, Occ: Nil
- 21] Shri. Namdeo Rama Sonulkar
Age: 68 years, Occ: Agriculture
- 22] Shri. Chandar Rama Sonulkar
Age: 66 years, Occ: Agriculture
- 23] Shri. Ramdas Laxman Sonulkar
Age: 47 years, Occ: Agriculture
- 24] Shri. Nivrutti Vithoba Sonulkar
Age: 70 years, Occ: Agriculture
- 25] Smt. Sonabai @ Ratanbai Chima Sonulkar
Age: 83 yeras, Occ: Nil
- 26] Shri. Sampat Chima Sonulkar
Age: 75 years, Occ; Agriculture
- 27] Shri. Sonba Chima Sonulkar
Age: 80 years, Occ: Agriculture
- 28] Shri. Bhau Baban Sonulkar
Age: 73 years, Occ: Agriculture
- 29] Shri. Dadabhau Baban Sonulkar
Age: 68 years, Occ: Agriculture
- 30] Shri. Kisan S/o Baban Sonulkar
Age: 63 years, Occ: Agriculture
- 31] Shri. Popat Sadashiv Sonulkar
Age: 61 years, Occ: Agriculture
- 32] Shri. Subhash Ananda Sonulkar
Age: 48 years, Occ: Agriculture
- 33] Shri. Bapu Sadashiv Sonulkar
Age: 53 years, Occ: Agriculture

- 34] Shri. Banan Sadashiv Sonulkar
Age: 73 years, Occ: Agriculture
- 35] Shri. Vilas Ananda Sonulkar
Age: 53 years, Occ: Agriculture
- 36] Shri. Anil Popat Sonulkar
Age: 33 years, Occ: Agriculture
- 37] Arun Manohar Makhare
Age: Major Occ: Agri
- 38] Sau. Sundarabai Balu Karhe
Age: Major Occ: Agri
- 39] Sau. Anusaya Dattu Karhe
Age: Major Occ: Agri
- 40] Sachin Somnath Gavhane
Age: Minor, through his
Minor Guardian: Mother
Sau. Lata Somnath Gavhane
Age: Major Occ: Agri
Respondent Nos. 3 to 40 are
R/o Gavhanewadi, Solunkar Vasti
Tal Shrigonda, District Ahmednagar.
- 41] Hon. Managing Director,
Bajaj Tempo Ltd, Akurdi
Pune.
- 42] Shri. Jaywant Haribhau Wakhare
Age: 69 years, Occ: Agri
R/o Hingani, Tal. Shrigonda,
District Ahmednagar.
- 43] Shri. Sampat Prabhakar Kouthale
Age: 64 years, Occ: Agri
R/o Devdaithan, Tal. Shrigonda
District; Ahmednagar.

....Respondents.

(R. No. 1 is Original Plaintiff
and R. No. 2 to 43 are
Original defendant Nos. 3 to
43)

Mr. Niteen V. Gaware, Advocate for appellants.

Mr. R.R. Karpe, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.

DATED : 9th August, 2016.

JUDGMENT :

1) Appeal is **admitted**. Notice after admission is made returnable forthwith. Learned counsel Shri. Karpe waives notice for original plaintiff after admission. Heard both the sides for final disposal.

2) In short, the facts leading to the institution of the appeal, can be stated as follows :-

Regular Civil Suit No. 169/2002 was filed by Smt. Tarabai against her brothers for relief of partition of ancestral and Joint Hindu Family properties. Some defendants, defendant Nos. 43 and 44 were the purchasers of some portion from defendant Nos. 1 to 3.

3) It is the case of plaintiff that her father Laxman died 30 years back, after 1956 and her mother Sakhubai died in the year 2001. It is contended that during lifetime of mother, defendant Nos. 1 to 3, her brothers kept on promising that they will give the share of plaintiff in the properties, but they avoided

to give the share. It is contended that when the plaintiff realized that defendants are trying to deprive her of her share in the properties, she demanded partition. It is contended that defendants have refused to give her share and partition the properties and so, cause of action took place for the suit. During pendency of the suit, one sale deed was made in favour of defendant Nos. 43 and 44 by defendant Nos. 1, 2, 5 to 7, 11, 20 and 26 and so, they were made parties. Prayer was made to set aside the sale deed made in favour of defendant Nos. 43 and 44.

4) Defendant Nos. 1 and 2 filed written statement and contested the suit. Defendant No. 43 also filed written statement to contest the suit. The defendants contended that defendant Nos. 1 and 2 had given Rs. 20,000/- to plaintiff as hand loan and when they demanded back the money, false suit is filed. It is also contended that some gold ornaments were given by mother of defendant Nos. 1 and 2 to plaintiff and to avoid to return of the ornaments, false suit is filed.

5) Issues were framed on the basis of aforesaid pleadings. The Trial Court held that the amended provision of section 6 of the Hindu Succession Act needs to be applied in favour of plaintiff, sister and held that she is entitled to 1/4th

share in the properties. Equal share was given to brothers and sister. The Trial Court protected the purchasers by refusing to set aside the sale deed made in favour of purchasers. The First Appellate Court in Regular Civil Appeal No. 60/2012, which was pending in the Court of 4th District Judge, Ahmednagar modified the judgment and decree and specifically directed to allot the property to defendants which is already sold by defendants to purchasers.

6) During arguments, it was submitted that widow of Laxman is not alive. The learned counsel for appellants placed reliance on the case reported as **(2016) 2 Supreme Court Cases 36 [Prakash and Ors. Vs. Phulavati and Ors.]** and submitted that the shares calculated by the Courts below are not correct and shares need to be corrected as per the interpretation made by the Apex Court in the case cited supra. In view of the submissions made, following substantial question of law is being considered in the present matter.

(i) Whether the plaintiff is entitled to have equal share along with brothers in suit properties which are admittedly ancestral and Joint Hindu Family properties of Laxman, father of plaintiff ?

7) In the case cited supra, the Apex Court has laid down that the amended provision of section 6 of the Hindu Succession Act, 1956 as amended in the year 2005 is not retrospective in operation. It is laid down that the provision applies in favour of female member only when both coparcener and his daughter were alive on the date of commencement of the Act i.e. 9.9.2005. In view of this circumstance, it needs to be presumed that partition had opened at the time of death of Laxman and whatever property was vested in other coparceners in view of the previous position of Hindu Law remained as it is. Thus, notional partition needs to be effected first amongst Laxman, his wife and two sons. In such notional partition, Laxman would get $\frac{1}{4}$ th share. After the death of Laxman his $\frac{1}{4}$ th share can be equally divided amongst his widow, two sons and one daughter. So, in the partition in the share of Laxman, plaintiff would get $\frac{1}{16}$ th ($\frac{1}{4} \times \frac{1}{4}$) share. As widow of Laxman was having her own share as $\frac{1}{4}$ th share and she would get $\frac{1}{16}$ th share in the property of husband, at the time of her death, she was having $\frac{5}{16}$ th share. This $\frac{5}{16}$ th share needs to be equally distributed amongst two sons and one daughter. Thus, in this partition, plaintiff gets $\frac{5}{48}$ th share. Thus, the plaintiff can get $\frac{1}{16}$ th + $\frac{5}{48}$ th share which comes to $\frac{8}{48}$ i.e. $\frac{1}{6}$ th share. Each son accordingly gets $\frac{20}{48}$ th share i.e. $\frac{5}{12}$ th share. Thus, the

appeal needs to be allowed partly to change the shares accordingly.

8) In the result, appeal is partly allowed. The judgments and decrees of the Courts below are hereby modified to make the share of plaintiff as 1/6th share and share of each brother as 5/12th. The remaining part of the judgment and decree of the District Court by which interest of the purchasers is protected stands as it is. Decree is to be prepared accordingly. All civil applications are disposed of.

[T.V. NALAWADE, J.]

ssc/